

**SUBJECT:** Authority for agricultural nonpoint source pollution control

**COMMITTEE:** Natural Resources — favorable, without amendment

**VOTE:** 9 ayes — Counts, Bosse, Combs, Greenberg, Lewis, Nieto, Puente,  
B. Turner, Yost

0 nays

2 absent — Harris, Hochberg

**SENATE VOTE:** On final passage, March 17 — voice vote

**WITNESSES:** For — Robert Buckley, Texas State Soil and Water Conservation Board

Against — None

**BACKGROUND:** The Texas State Soil and Water Conservation Board was established in 1939 to preserve farm and grazing lands and prevent harmful consequences of soil erosion. The board is composed of five members elected from soil and water conservation districts by adults or family farm corporations holding title to or living on farm or ranch land. In 1975, to comply with the federal Water Pollution Control Act, Gov. Dolph Briscoe issued an executive order (DB 18-A) designating the board as the planning agency for nonpoint source pollution arising from agriculture and silviculture. In 1985 the Legislature amended the Agriculture Code to mandate that the board "plan, implement, and manage programs and practices for abating agricultural and silvicultural nonpoint source pollution."

Nonpoint source pollution arises from diffuse sources rather than a single identifiable outlet. The pollutants generally are carried off the land into rivers and streams by stormwater. Industries giving rise to nonpoint source pollution include agriculture, forestry, mining, construction and disposal facilities.

**DIGEST:** SB 503 would amend Agriculture Code Chapter 201 to establish the State Soil and Water Conservation Board as the lead agency in Texas for activity relating to the abatement of agricultural and silvicultural nonpoint source

pollution. The bill would authorize the board to set up a water quality management plan certification program and investigate complaints about any plan or law or rule relating to pollution under its jurisdiction. The bill also would establish a cost-sharing assistance program to reimburse farm owners or operators for up to 75 percent of the costs of implementing soil and water conservation land improvement measures.

Other state agencies with similar responsibilities would be required to coordinate with the board on any abatement programs and activities. The board would represent the state before federal agencies, including the U.S. Environmental Protection Agency, on matters related to agricultural or silvicultural nonpoint source pollution. However, the state would continue to be represented by the General Land Office in matters concerning the federal coastal zone management program, and by the Texas Natural Resources Conservation Commission (the new agency to be formed from the Water Commission and the Air Control Board) in matters relating the state's overall participation in the federal national pollutant discharge elimination system (NPDES).

The water quality management plan certification program would target areas identified as having or likely to have water quality problems as a result of agricultural or silvicultural nonpoint source pollution. Local soil and water conservation districts would help develop, implement and maintain plans in compliance with state water quality standards established by the Natural Resources Conservation Commission. The board would hear complaints about violations of a plan or any other rules or laws under its jurisdiction, but would have no enforcement authority. It would refer to the commission any complaints where the responsible party fails or refuses to take corrective action.

The cost-share assistance program would apply to soil and water conservation land improvement measures "consistent with the purposes of controlling erosion, conserving water, or protecting water quality." Funds would be distributed through the local conservation districts to owners or operators of agricultural land with an approved conservation plan. The state board could waive the 75 percent cap on cost-share assistance if it found that the higher share was "necessary to obtain adequate implementation of a certain soil and water conservation land improvement

measure." The board similarly could waive a prohibition on assistance for measures already being aided by another source if it found that co-sharing of costs would enhance the efficiency and effectiveness of a measure and lessen the state's financial commitment.

The bill would amend Water Code sec. 26.121 to exempt from statutory prohibitions against pollution any discharges complying with a board-approved certified water quality management plan.

SB 503 also would make conforming amendments to the Water Code, stipulating that the board and its agents were responsible for the abatement and prevention of pollution resulting from agricultural or silvicultural nonpoint source pollution.

**SUPPORTERS  
SAY:**

SB 503, along with SB 502, would firmly establish the State Soil and Water Conservation Board's role as lead agency for nonpoint source pollution from agriculture and silviculture and authorize it to embark on some innovative programs for addressing pollution problems that are not being dealt with by current state programs.

The board's long years of work in erosion control and runoff problems make it eminently qualified to help landowners develop and manage individual water quality plans. Furthermore, board-sponsored programs are likely to appeal to certain populations that distrust state regulators. Plans developed under the board's auspices would be voluntary and involve smaller agriculture and silviculture landowners who are generally exempt from Water Commission permitting requirements, such as feedlot operators with fewer than 250 head of cattle. Small farming and ranching operations are likely to be more receptive to the advice of board members — and therefore follow through with a plan — since the board represents their interests and knows the special problems that they face. Local board members stay up-to-date on effective land management techniques. Farmers and ranchers have elected them to the local soil and water conservation districts because they have proven themselves good managers of their own properties.

The cost-share assistance program established by the bill would help ensure compliance with individual water quality management plans. Small-scale

farmers and ranchers already are caught in a economic bind; funds to construct pollution prevention techniques such as filtration ponds simply are not there. Forward-looking policy would have the state help share the burden now to avoid costly remediation later. The \$6.8 million budgeted for the program in the upcoming biennium is minimal compared to the hundreds of millions of dollars now being paid out of the state's underground storage tank remediation fund to resolve pollution problems caused by leaking petroleum tanks. The program budget is lean, and the board will oversee the program and be accountable for ensuring that the funds will be used as intended.

Under SB 503, the board would not infringe on the special authorities other state agencies have to carry out federal programs. In particular, the bill has been carefully crafted to ensure that its provisions would not negatively affect the state's ability to secure from the federal government permitting authority for the National Pollutant Discharge Elimination System nor jeopardize federal funding for Texas Water Commission programs. Water quality management plans would have to meet TWC standards in order to be certified.

**OPPONENTS  
SAY:**

Besides helping to further an increasing fragmentation of state oversight of pollution problems, SB 503 would render the State Soil and Water Conservation Board a regulatory agency composed of regulators elected by and from the people they regulate. The possibilities of lax oversight and abuse of authority are legion under such an arrangement.

The cost-sharing program presents a particularly vulnerable area. To be eligible, a pollution prevention project would have to be "consistent with the purposes of controlling erosion, conserving water or protecting water quality." Conceivably, a farmer could request cost-sharing for planting a bare field with crops, since this would have the effect of controlling erosion.

The special interests of board members may blind them to problems as well as solutions that might be obvious to a disinterested third party. The use of pesticides is just one such example. Farmers rely heavily on these chemicals, tending to dismiss as exaggerated claims of pesticide-induced chemical sensitivities and even cancers. Is a farmer serving on a district

board likely to suggest reducing chemical pesticides or using organic substances as a viable element of a pollution prevention program?

Furthermore, while the bill places the board in the position of regulator, it denies it any enforcement power. The board would be allowed to hear complaints but would have no authority to ensure that its orders were carried out.

**OTHER  
OPPONENTS  
SAY:**

SB 503 would exempt ranchers and farmers from the normal burdens of government assumed by most other citizens. The general appropriations bill now before the House would authorize more than \$1.8 million in start-up costs for the program, and more than \$4 million for program operations during the second year of the biennium. Nonpoint source pollution is pollution, regardless of whether it comes from a dairy feedlot or an oil and lube shop. Garage owners do not have their oil traps and containment barriers paid for by the state; why should farmers and ranchers be treated differently?

**NOTES:**

SB 502 by Sims, also on today's calendar, would codify within the Water Code the board's authority for agricultural and silvicultural nonpoint source pollution.